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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/639,508	08/16/2000	Richard S. Chomik	460.1891USV	3194

7590 03/28/2013  
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EXAMINER
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DEXTER, CLARK F

ART UNIT	PAPER NUMBER
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3724

MAIL DATE	DELIVERY MODE
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03/28/2013

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/639,508	<b>Applicant(s)</b> CHOMIK ET AL.	
	<b>Examiner</b> CLARK F. DEXTER	<b>Art Unit</b> 3724	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2012.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 15, 16, 25-29, 43 and 44 is/are pending in the application.
- 5a) Of the above claim(s) 27-29 is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 15, 16, 25, 26, 43 and 44 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 28 September 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                          |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 16, 2012 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35

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U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35

U.S.C. 103(a).

3. Claims 15, 16, 25, 26, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwood et al., pn 5,499,729.

Greenwood discloses the claimed method (except for the limitations shown in italics and grayed-out) as follows:

a method of forming a plurality of perforations (e.g., 73, 74) in a concavely curved domed portion (e.g., 77) of a vent disc (e.g., 72), which comprises:

forming a plurality of upwardly extending depressions (e.g., 74) in an undersurface of said domed portion while leaving a residual (e.g., the portion through which 73 extends; see Fig. 17) of said domed portion above each of said depressions, said depressions each having a centerline, each of said centerlines of said depressions being coincident with a radius that forms a concave curvature of said domed portion; and

forming a slit (e.g., see col. 2, lines 25-29; and see claim 7, particularly in combination with claim 1 from which claim 7 depends, wherein claim 1 sets forth such a combination in the line bridging columns 10-11 when included with the subject matter of claim 7) through each said residual, said slits being resealable and each having a centerline, each of said centerlines of said slits being formed coincident to a corresponding one of said centerlines of said depressions, *wherein said slits that have a width of about 0.040 to about 0.080 inches*, said domed portion being elastomeric,

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*said domed portion having 35 to 60 of said slits*, each of said slits being in a pattern on said domed portion having a series of *12* radial extensions (e.g., in Fig. 15, the portions of the pattern which form an “X” and a “+” can be considered to form 4 radial extensions combined), each radial extension of said series of *12* radial extensions being separated by an angle of *30°* and each of said series of *12* radial extensions having an equal number of said slits (e.g., 3 slits), and all of said slits are on said series of *12* radial extensions;

[claim 15] The method of claim 16, further comprising forming each of said depressions as hemispherical in shape (e.g., see Fig. 17);

[claim 43] wherein each radial extension has at least 3 slits.

**Greenwood lacks** the specific slit width (i.e., what is typically considered to be the “slit length”) as follows:

[from claim 16] wherein said slits that have a width of about 0.040 to about 0.080 inches;

[claim 25] wherein said slits have a width of about 0.058 to about 0.062 inch;

[claim 26 (from 25)] wherein said slits have a width about 0.060 inch.

However, it would have been obvious to one having ordinary skill in the art to provide slits having such a width because to provide such a width would be the mere discovery of the optimum or workable ranges within the general conditions of the prior art by one having ordinary skill in the art. Additionally, it would have been obvious to one having ordinary skill in the art to provide the disclosed invention of Greenwood to

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such a scale, based on a particular need, such that such a width criteria is met by the invention disclosed by Greenwood.

**Greenwood further lacks** the specific number of slits as follows:

[from claim 16] said domed portion having 35 to 60 of said slits.

However, it would have been obvious to one having ordinary skill in the art to provide a particular number of slits including additional slits as necessary to provide the desired diaphragm (e.g., air flow and size) characteristics. Therefore, it would have been obvious to one having ordinary skill in the art to provide the specific number of slits on the diaphragm of Greenwood to gain the well known benefits including that described above.

**Greenwood further lacks:**

[from claim 16] each radial extension of said series of 12 radial extensions being separated by an angle of 30° and each of said series of 12 radial extensions having an equal number of said slits (e.g., 3 slits), and all of said slits are on said series of 12 radial extensions;

[claim 44] wherein each slit is disposed perpendicular to said radial extension.

**However**, the Examiner respectfully maintains the position previously taken for claims 41 and 42, now canceled, and thus takes Official notice that providing the perforations (which includes the slits) in such a pattern is merely one of a myriad of such known patterns and it is respectfully submitted that providing such a pattern amounts to a mere matter of design choice to one having ordinary skill in the art and thus obvious to one having ordinary skill in the art.

***Response to Arguments***

4. Applicant's arguments filed October 16, 2012 have been fully considered but they are not persuasive. It is respectfully submitted that the Examiner maintains the position that the specific pattern of slits now recited in claim 16 (previously recited in claims 41 and 42, now canceled) amounts to a mere matter of design choice to one having ordinary skill in the art and thus obvious to one having ordinary skill in the art.

Applicant is welcome to contact the Examiner to further discuss this matter or any matters related to the present application.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CLARK F. DEXTER whose telephone number is (571)272-4505. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/CLARK F DEXTER/  
Primary Examiner, Art Unit 3724**

cfd  
March 25, 2013